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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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9 NORMA TAPIA,
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11 Plaintiff,
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13 v.
14

15 THE STATE OF WASHINGTON,
16 DEPARTMENT OF SOCIAL AND HEALTH
17 SERVICES; SUSAN N. DREYFUS, both
18 individually and in her capacity
19 as Secretary of the Department
20 of Social and Health Services;
21 MAGDALENA ZAMORA, both
22 individually and in her capacity
23 as an employee of the Department
24 of Social and Health Services,
25 CHRISTINA SOTO, both
26 individually and in her capacity
 as an employee of the Department
 of Social and Health Services;
 and CARLOS CARRILLO, both
 individually and in his capacity
 as an employee of the Department
 of Social and Health Services,

27 Defendants.

28 NO. CV-09-5100-EFS
29

30 **ORDER GRANTING THE
31 DEFENDANTS' MOTION TO
32 DISMISS**

33 Before the Court, without oral argument, is Defendants State of
34 Washington, Washington's Department of Social and Health Services (DSHS),
35 Susan Dreyfus, Magdalena Zamora, Christina Soto, and Carlos Carrillo's
36 Motion to Dismiss Pursuant to Fed. R. Civ. Proc. 12(b) (Ct. Rec. [7](#)). The
37 State, DSHS, and the individual "official capacity" Defendants argue that

1 1) they are absolutely immune from liability in federal court under the
2 Eleventh Amendment and/or 2) they are not "persons" as required by 42
3 U.S.C. § 1983 and therefore Plaintiff fails to state a § 1983 claim
4 against them. Plaintiff acknowledges that a state and its officials, who
5 are sued in their official capacity, are generally entitled to Eleventh
6 Amendment immunity; however, Plaintiff maintains that an immunity
7 exception applies and highlights that she may sue the individual
8 Defendants for acts done in their individual capacity. After reviewing
9 the submitted materials and relevant authority, the Court is fully
10 informed and grants Defendants' motion.

11 **A. The Complaint's Allegations**

12 Defendant Zamora, a social worker with DSHS, was assigned to assist
13 Plaintiff and her children, and as a result, Defendant Zamora learned
14 about Plaintiff's mental health, legal, social, medical, and economic
15 situations, including her financial difficulty with making her mortgage
16 payments. Defendant Zamora earned Plaintiff's trust. In January 2006,
17 Defendant Zamora presented Plaintiff with a quitclaim deed, which gave
18 Plaintiff's property to Brandon and Holly Christopher; Defendant Zamora
19 did not explain the document to Plaintiff, but simply told Plaintiff that
20 signing the document would help her. Plaintiff signed the document
21 without understanding the effect of her actions. Defendant Zamora's
22 coworker, Defendant Christina Soto, witnessed and notarized Plaintiff's
23 signature. Nine months later, Defendant Zamora presented Plaintiff with
24 two documents: 1) a warranty deed transferring ownership of the
25 residence to Defendant Zamora and 2) a notice of rescission of real
26 estate contract transferring ownership of the property to the

1 Christophers. Defendant Zamora did not explain these documents to
2 Plaintiff, and Plaintiff signed the documents without understanding the
3 effect of her actions.

4 About this time, Plaintiff's personal property was removed from the
5 residence, along with her vehicle, by Defendant Zamora and/or individuals
6 hired by Defendant Zamora; these items have not been returned to
7 Plaintiff. Defendant Zamora advised Plaintiff that she was Plaintiff's
8 landlord and that Plaintiff was to pay her rent. Without her personal
9 property, Plaintiff could not rent the residence. Then, in December
10 2006, Defendant Zamora sold the residence to Lela Sheppard at a profit.
11 Plaintiff alleges that Defendants Zamora and Soto's supervisor, Defendant
12 Carrillo, failed in his oversight responsibilities. Plaintiff seeks
13 relief under 42 U.S.C. § 1983 and state law.

14 **B. Authority and Analysis**

15 The Court must resolve 1) whether the State of Washington, DSHS, and
16 the individual Defendants sued in their official capacity are entitled
17 to sovereign immunity and 2) whether Plaintiff may pursue her 42 U.S.C.
18 § 1983 claim against the individual Defendants.

19 1. Sovereign Immunity

20 States, state departments, and state officials sued in their
21 official capacities are protected by the Eleventh Amendment from suits
22 brought by citizens in federal court.¹ See *Hans v. Louisiana*, 134 U.S.

23 ¹ The Eleventh Amendment provides:

24 The Judicial power of the United States shall not be construed
25 to extend to any suit in law or equity, commenced or prosecuted
26 against one of the United States by Citizens of another State,
or by Citizens or Subjects of any Foreign State.

1 1 (1890). As the parties seeking Eleventh Amendment immunity, Defendants
 2 bear the burden of proving entitlement to such immunity. See *Hill v.*
 3 *Blind Indus. & Servs.*, 179 F.3d 754, 756 (9th Cir.1999), amended by 201
 4 F.3d 1186 (9th Cir. 2000). Plaintiff maintains Defendants are not
 5 entitled to Eleventh Amendment immunity, relying upon the following
 6 exceptions to the general immunity rule: 1) acceptance of federal funds
 7 pursuant to a federal statute, which abrogates Eleventh Amendment
 8 immunity, see *Douglas v. Cal. Dep't of Youth Auth.*, 271 F.3d 812, 817-18
 9 (9th Cir. 2001), and 2) an impermissible taking of an individual's
 10 property, see *Suever v. Connell*, 439 F.3d 1142, 1146-48 (9th Cir. 2006).
 11 The Court concludes these exceptions do not apply.

12 First, Plaintiff fails to identify the federal statute that waives
 13 a state's sovereign immunity for § 1983 claims by accepting federal
 14 funds. Plaintiff asks the Court for time to conduct discovery into the
 15 federal funds that the State and DSHS receive. However, Plaintiff does
 16 not need discovery in order to identify the federal statute upon which
 17 Congress manifested a clear intent to condition participation in the
 18 federally-funded program on a state's consent to waive its constitutional
 19 immunity. See *Douglas*, 271 F.3d at 819. Therefore, without a federal
 20 statute that waives immunity, the federal-funding exception does not
 21 apply.

22 Second, the Court determines the improper-seizure exception does not
 23 apply to the alleged facts. The case cited by Plaintiff, *Suever v.*
 24 *Connell*, 439 F.3d 114, 1143 (9th Cir. 2006), is inapposite. In *Suever*,
 25 a state agency improperly seized and retained unclaimed property under

1 a state statute. The Ninth Circuit ruled "the Eleventh Amendment does
2 not bar a request for return of a plaintiff's property if the complaint
3 alleges that state officials acted either *ultra vires* or
4 unconstitutionally" because "[c]laims requesting the return of the
5 individuals' property are less likely to offend a state's sovereign
6 immunity than claims requesting the payment of government funds." *Id.*
7 at 1146-47. Plaintiff alleges that state officials acted
8 unconstitutionally; however, Plaintiff also alleges that the residence
9 is held by non-party Ms. Sheppard and that her personal property was
10 taken by Defendant Zamora or non-parties hired by Defendant Zamora to
11 their own personal benefit. Therefore, the State is not in a position
12 to return either the residence or the personal property. The improper-
13 seizure exception does not apply.

14 Accordingly, the State, DSHS, and the individual Defendants sued in
15 their official capacity are entitled to sovereign immunity. The State
16 and DSHS are dismissed; and any claims brought against the individual
17 Defendants in their official capacity are dismissed.

18 2. Individual Defendants

19 At this time, Plaintiff's state law claims against the individual
20 Defendants, as well as the § 1983 claims brought against the individual
21 Defendants in their personal capacity, remain. Plaintiff is correct that
22 § 1983 "personal capacity" claims may be based on acts committed while
23 acting in an official capacity. See *Hafer v. Melo*, 502 U.S. 21, 24
24 (1991) ("[S]tate officers may be held personally liable for damages under
25 § 1983 based upon actions taken in their official capacities.").

26

Accordingly, **IT IS HEREBY ORDERED:** Defendants' Motion to Dismiss Pursuant to Fed. R. Civ. Proc. 12(b) (**Ct. Rec. 7**) is **GRANTED**. The State of Washington and Department of Social and Health Services are **DISMISSED**. The claims asserted against the individual Defendants in their official capacities are **DISMISSED**. Plaintiff may pursue claims against the Individual Defendants in their individual capacities, including for official acts.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and provide a copy to counsel.

DATED this 23rd day of March 2010.

s/Edward F. Shea
EDWARD F. SHEA
United States District Judge

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